IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 6664 OF 2003

The Nashik Panchvati Panjrapol Trust ...Petitioner
versus
The Collector, Nashik and ors. ..... Respondent.

...

Shri P.N.Joshi for the petitioner.
Shri N.P.Deshpande AGP for Respondents 1,2,4 and 5.
Shri N.V.Gangal for Respondent no.3.

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CORAM; V.G. PALSHIKAR &
D.B. BHOSALE, JJ.

DTAED; 19TH SEPT., 2005.

P.C.

1. By this petition, the petitioner has made the following

prayers.

a) Issue an appropriate Writ/order directing the respondents, more particularly respondent nos.1 and 2, to complete the acquisition proceedings initiated by them on the basis of Notification dated 17-1-1998 published in Maharashtra Govt. Gazette on 23-4-1998 published in Maharashtra Govt. Gazettee on 23-04-1998 u/s. 126 of the Town Planning Act by passing and declaring the Award under sec. 11 and 12 of the Land Acquisition Act as expeditiously as possible preferably by a time bound schedule.

b) Issue an appropriate writ/order directing the Respondents to pay the amount of compensation alongwith statutory benefits of interest, Solatium, etc. as provided under the provisions of the Land Acquisition Act to the petitioner in respect of the unauthorised use of the land belonging to the petitioner.

c) Issue an appropriate writ/order directing the respondent no.3. to pay rental compensation from the year 1976-77 @ 8% p.a. of the compensation per year from 1976-77 to October 2001 alongwith the interest thereon @ 12% p.a. for the unauthorised use of the land without payment of any rental compensation.

d) Pending the hearing and final disposal of this writ petition, the respondents be directed to pay such an adhoc amount of compensation, as this Hon'ble court may deem fit, to the petitioners.

e) Ad-interim relief in terms of prayer clause (d) mentioned above, may be granted.

f) Any other relief that may deem fit may be granted.

2. Notice why the petition be not admitted was issued and a detailed affidavit in reply has been filed. In paragraphs 5 and 6 of the affidavit dated 28-9-2004 the respondent Corporation has taken a clear stand that the petition is not maintainable. The averments in paragraphs 4,5 and 6 read as under:

4) I say that it is also apparent from the records now that under the provisions of the said Act, the petitioner had asked for exemption from granting a certain lands which exceeded the ceiling area, the petitioner being a Trust. The land in question namely Survey No.195 neither an exemption was asked for nor such an exemption was asked by the petitioner. Thus, in any case, this land vests in the State of Maharashtra and no compensation would be payable under the Land Acquisition Act to the petitioner. Moreover, the fraud which seems to have been committed by the petitioner is being investigated at the highest level namely the Revenue Department and appropriate proceedings will be taken. The petitioner by suppressing these material facts and are trying to take away the compensation which they may not be entitled to get under the law. The petition therefore amounts to an abuse of the process of law by suppressing the material facts and on this ground alone the petition is liable to be dismissed with costs.

5) It is further submitted that by Resolution passed by the then Nashik Municipal Council being No.30 dated 28-4-1940 for a period of 99 years from that day i.e. upto 28-4-2039. It is a common ground that the said land is in possession of the Nashik Municipal Corporation as a lessee and assuming without admitting that any compensation is payable under the Land Acquisition Act, it is the N.M.C. which will be entitled to get not less than 2/3rd of the compensation as the lessee. On this preliminary ground the petition is liable to be summarily dismissed with costs.

6) Without prejudice to the above, with reference to para no.1 of the writ petition, I say that it is not admitted that the petition Trust is the owner of the said land now. IN view of the provisions of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 the proceedings in respect of the said land are pending before the Hon'ble Minister of Revenue and in that sense the petition filed by the petitioner is premature. The land is admittedly in possession of N.M.C. as lessee. The allegation made that the respondent no.3 stopped payment of lease rent from the year 1976-77 is not factually correct. In fact, the lease rent is paid by to the year 1987. In the year 1988, the petitioner made a suggestion that the Corporation should purchase the said land. In view of the M.R.T.P. Act, without disclosing that the petitioner Trust has already lost the title, since the Corporation was not aware of this fact, the Corporation in the year 1989 initiated acquisition proceedings. The Corporation was already ready and willing to pay the fixed lease rent and the allegation made by the petitioner in Para no.1 on that behalf are not correct. It is true that the land is reserved for the public purpose of stadium and the stadium is already constructed by the Corporation and it is used for the aforesaid public purpose. The work of the stadium was completed as par the directions given by this Hon'ble court in writ petition no.1718 of 2000. Initially, for some years the lands were used for composite depot and as per the variation in the sanctioned development plan it is being used as a statidum as aforesaid.

3. Having considered this aspect, we were not inclined to interfere in any manner. Then a request was made on behalf of the petitioner that we need not record our reasons for rejecting the petition, and it may be disposed of as withdrawn. The petition is accordingly disposed of as withdrawn. It is open for the petitioner to agitate his grievance in appropriate forum pending before the Government.

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